FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 1543 OF 2006
WITH
CRIMINAL WRIT PETITION NO. 1544 OF 2006
WITH
CRIMINAL WRIT PETITION NO. 1545 OF 2006
WITH
CRIMINAL WRIT PETITION NO. 1546 OF 206
WITH
CRIMINAL MISC. APPLICATION NO. 439 OF 2006
IN
CRIMINAL WRIT PETITION NO. 1546 OF 2006

Office notes, office Memoranda of Coram, appearances, Court's orders or directions & Registrar's orders.	Court's or Judge's Orders

Mr. A.A. Udaipuri i/b M/s. Udaipuri & Co. for the petitioner

Mr. M.H.Ramsinghani for R-1 & 2

Ms. M.H. Mhatre, APP

CORAM: SMT. RANJANA DESAI, J.

DATED:-4/12/2006

P.C.:-

The petitioner, original complainant has filed four cases under Section 420 of the Indian Penal Code ("I.P.C." for short) and six cases under Section 138 of the Negotiable Instruments Act ("the said Act" for short) against the respondents original accused. It appears that

initially all these 10 complaints were filed in the Metropolitan Magistrate's 2nd Court Mazgaon, Mumbai. Thereafter the six complaints under Section 138 of the said Act were transferred to the 6th Court at Mazgaon. The four cases under Section 420 of the I.P.C. remained at the 2nd Court at Mazgaon, Mumbai.

2. Therefore, applications were filed by the original accused 1 and 2 under Section 410 of the Criminal Procedure Code ("Code" for short) that all these cases may be made over to one Magistrate, i.e. either to the Magistrate presiding in the 6th Court or to the Magistrate presiding in the 2nd Court, for the sake of convenience because according to the accused the said cases arose out of the same transaction.

3. The said applications came to be granted by the learned Chief Metropolitan Magistrate, Esplanade, Mumbai on 31st March, 2006. Under that order the Magistrate presiding in

the 6th Court at Mazgaon, Mumbai was directed to hear and dispose of all the cases. Being aggrieved by this order, the complainant filed revision applications in the Sessions Court at Mumbai. By order dated 21/6/06 the revision applications came to be dismissed and hence these writ petitions.

4. I have heard the learned counsel for the parties.

5. The learned counsel for the petitioner strenuously contended that the learned Chief Metropolitan Magistrate erred in transferring all the cases to one court. He submitted that, that will cause great prejudice to the complainant because the Magistrate may record common evidence in all cases. He submitted that besides in case the learned Magistrate convicts the accused in one case it is possible that the accused would raise a contention that the cases be transferred from that court because the learned Magistrate is prejudiced

and he may convict the accused in other cases also. He, therefore, submitted that the impugned orders be set aside.

6. The learned counsel for the respondents on the other hand submitted that all the cases were initially filed in the same court. The impugned order will be convenient to all parties and hence it should not be upset.

7. In my opinion, it is not necessary to interfere with the impugned order. I find that if one court hears all the cases, it will be convenient to all parties. Learned Sessions Judge has rightly held that, if one Magistrate hears all cases there would be smooth progress of the matter. This consideration seems to have weighed with the learned Chief Metropolitan Magistrate also when he passed the order transferring all the cases to one court.

8. The objection of the learned

counsel for the petitioner is that common evidence will be led and that will be prejudicial to the interest of the complainant. If such application is made by the accused it will be always open to the complainant to oppose it and at that stage the learned Magistrate seized of the matter will pass appropriate orders in accordance with law after taking into consideration the contentions advanced by both sides.

9. The contention that if the learned Magistrate convicts the accused in one case a prayer for transfer of the cases may be made by the accused, appears to me to be too far fetched. However, in case such an application is made the complainant can resist that also. In vie w of the above I pass the following order:

"The petitions are dismissed.

In view of the dismissal of petitions, Criminal Misc. Application No. 439 of 2006 does not survive and

is disposed of. The petitioner may, however, approach the learned Magistrate for prayer 'F' thereof. If such application is made, the learned Magistrate will dispose it of in accordance with law.

If any application is made by the accused that in all the cases common evidence be led, it will be open to the complainant to resist it. All contentions in that behalf are left open and the learned Magistrate shall after hearing both sides pass order in accordance with law.

I make it clear that I have not expressed any opinion on the merits of the case.

At this stage, the learned counsel for the complainant says that as the complainant has been prosecuting various cases which he has filed against the accused, the complainant could not file his affidavit of evidence. He submitted that affidavit of evidence is likely to be bulky, in

view of complicated nature of facts and hence the complainant may be permitted to file affidavit of evidence by the end of January, 2007. The learned counsel for the respondent has strenuously opposed this submission.

In the facts of this case, I see no reason why the complainant should not be given time to file affidavit of evidence by end of January, 2007. Order accordingly. However, the complainant should not ask for any further time. Parties to appear before the learned Magistrate on 1st February, 2007."

JUDGE.